

**Reserved On : 15/10/2025****Pronounced On : 21/11/2025****IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 4418 of 2014****With****CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 1 of 2025****In R/SPECIAL CIVIL APPLICATION NO. 4418 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

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|------------------------|-----|----|
| Approved for Reporting | Yes | No |
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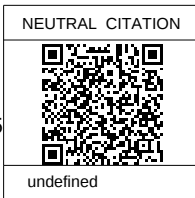
**VVF INDIA LTD & ANR.****Versus****UNION OF INDIA & ORS.**

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**Appearance:****MR MIHIR JOSHI, SENIOR ADVOCATE WITH MR KUNAL NANAVATI  
WITH MR KAUSTABH SHRIVASTAVA WITH MR VISHAL AGRAWAL for  
NANAVATI ASSOCIATES(1375) for the Petitioner(s) No. 1,2****MR ANKIT SHAH(6371) WITH MR UTKARSH SHARMA for the  
Respondent(s) No. 1,2,3**

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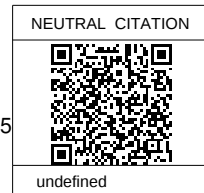
**CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****CAV JUDGMENT****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**



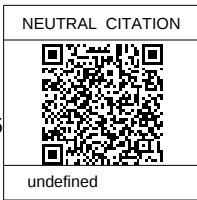
1. Heard learned Senior Advocate Mr. Mihir Joshi with learned advocate Mr. Kunal Nanavati with learned advocate Mr. Kaustabh Shrivastava with learned advocate Mr. Vishal Agrawal for Nanavati Associates for the petitioner and learned advocate Mr. Utkarsh Sharma for learned advocate Mr. Ankit Shah for the respondents.

2. By this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the show cause notice dated 27.06.2013 issued by respondent no.2 - Additional Director General, Directorate of Revenue Intelligence, Ahmedabad.

3. The show cause notice is issued



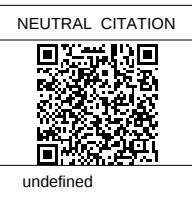
calling upon the petitioners to show cause as to why the claim of concessional rate of duty in terms of Serial No.57 of the Customs Notification No.12/2012 dated 17.03.2012 which is equivalent to Serial No.33A of the erstwhile Customs Notification No.21/2002 dated 01.03.2002 on the import of goods namely Crude Palm Kernel Oil edible grade covered under the Bills of Entry as per Annexure-C and Annexure-D to the show cause notice should not be rejected. The petitioners were also called upon to show cause as to why the Bills of Entry should not be assessed on the tariff rate of 100% Customs duty corresponding to respective entry being CTH 15132110 along with additional duty of customs leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1985



(SAD) which was claimed as exempt vide Notification No. 20/2006-CUS dated 01.03.2006 and Notification No.12/2012-CUS dated 17.03.2012 in respect of the import of the goods covered under the Bills of Entry.

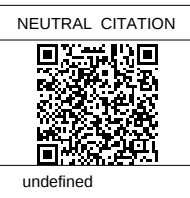
4. This Court [Coram: Hon'ble Ms. Justice Harsha Devani (As Her Ladyship was then) and Hon'ble Ms. Justice Sonia Gokani (As Her Ladyship was then)] by order dated 18.09.2014 has admitted this petition while deciding the issue of jurisdiction to entertain this petition, wherein it is observed as under:

"6. Having regard to the fact that the very maintainability of the petition has been called in question on behalf of the respondents, at the outset it would be necessary to deal with the said issue. For this purpose it would be necessary to peruse



the show cause notice issued by the respondents, which prima facie reveals that the same is based upon the Circular No. 40/2001Cus., dated 13th July 2001, inasmuch as, the record of the case indicates that it is only the said circular which provides for giving the benefit of concessional rate of duty on edible oil so long as the oil is imported for edible purpose. The learned counsel for the respondent is not in a position to point out any other provision in law or any notification of the Central Government, which provides that the benefit of the exemption notification in question would be based upon the end use of the goods imported.

7. A perusal of the Chapter 15 of the Tariff Act reveals that the Palm Kernel Oil falls under Tariff Item No. 1513 21 10. The first supplementary note to Chapter 15 of the Tariff Act, reads thus: "In this Chapter, "edible grade", in respect of a goods (ie., edible oil) specified in Appendix B to the Prevention of Food Adulteration Rules, 1955, means the standard of quality specified for such goods in that Appendix". Thus, for qualifying for the purpose of being considered to be of edible grade, the goods

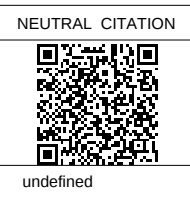


specified in Appendix B of the Prevention of Food Adulteration Rules, have to meet with the standard of quality specified for such goods in the Appendix. Palm Kernel Oil finds place at A.17.21 of Appendix B to the said rules. The Prevention of Food Adulteration Act, 1954 has been repealed by the Food Safety and Standards Act, 2006. The Prevention of Food Adulteration Rules, 1955 stand substituted by the Food Safety and Standards Rules & Regulations, 2011. The standards prescribed in respect of Palm kernel oil are under Regulation No.2.2.1 (21) of the Food Safety and Standards (Food Products and Food Additives) Regulations, 2011. A perusal of the analysis reports of the goods in question, clearly show that the same meet with the requirements laid down under Regulation No.2.2.1 (21) for Palm Kernel Oil. Thus, the record of the case clearly demonstrates that the goods imported by the petitioner are of edible grade in terms of the above supplementary note inasmuch as the Food & Drugs Laboratory has clearly opined that the goods imported by the petitioner from time to time conform to the standards and provisions laid down under the Regulation No. 2.2.1 (21) of the



Food Safety and Standards (Food Products and Food Additives) Regulations, 2011 for Palm Kernel Oil and can be used only after refining and conforming to the standards as laid down under Regulation No. 2.2.1 (16).

8. It may be noted that Regulation 2.2.1 (16) defines refined vegetable oil and further provides that refined vegetable oils shall be obtained from the vegetable oils enumerated thereunder. Palm Kernel Oil finds mention at item (xix) thereunder. It is not the case of the petitioner that it is importing goods answering the description of 2.2.1 (16) but that it imports Palm Kernel Oil (Edible Grade) which falls within the ambit of Regulation 2.2.1 (21). It may be noticed that there is no dispute with regard to the description, classification and use of the goods which are imported by the petitioner. The dispute raised by respondents is that the goods, after being imported are not used for the purpose of converting the same into edible oil, and therefore, in view of the end use made by the petitioners of the imported goods, they are not entitled to the benefit of the exemption notification.

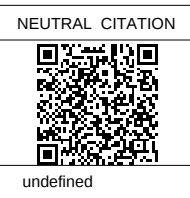


9. The record shows that the petitioner has been availing of the benefit of the exemption notification over a period of time right from the year 2010, whereas the show cause notice has been issued for the first time in the year 2013. On a bare reading of exemption notification No.12/2012cus. dated 17.3.2012, prima facie, there is nothing to show that for the purpose of availing the benefit thereunder, the end use of the all goods of the description "crude and edible grade" falling under the Chapter or Heading or Subheading or tariff as provided against serial no.57 of the said notification should be for edible purpose. It is not the case of the respondents that the goods do not fall within the ambit of serial no. 57 of the said notification, but that since the end use is not for edible purpose, the same would not fall within the ambit of the said serial number and the petitioners would not be entitled to the benefit of exemption notification.

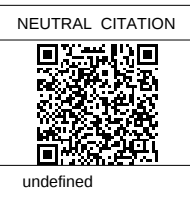
10. In the opinion of this court, prima facie, on the plain reading of Notification No.12/2012cus., the contention of the respondents does not appear to have any legal basis inasmuch as the exemption notification is clear and takes



within its ambit of all goods, whether crude or of edible grade. There is nothing in the exemption notification which would warrant an assumption that for the purpose of falling within the ambit of serial no.57 of the exemption notification the end use of the goods falling within the description "crude and edible grade" has to be for edible purposes. It is by now well settled by a catena of decisions of the Supreme Court that in a taxing statute there is no room for any intendment, but regard must be had to the clear meaning of the words. The entire matter is governed wholly by the language of the notification. If the taxpayer is within the plain terms of the exemption, it cannot be denied its benefit by calling in aid any supposed intention of the exempting authority. The exemption notification as is well known should be construed liberally once it is found that the assessee fulfils all the eligibility criteria. In reading an exemption notification, no condition should be read into it when there is none. If an assessee is entitled to the benefit thereof, the same should not be denied. Therefore, the contention of the respondents that the intent behind the exemption notification to provide

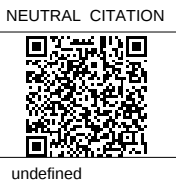


for lower rates of oil in public interest has to be kept in mind while construing the said notification does not merit acceptance. On a plain reading of Notification No.12/2012 it is clear that serial no. 57 thereof provides for exemption to the goods falling under Chapter or Heading or Subheading or tariff No.1508, 1509, 1510, 1512, 1513, 1514 or 1515 if the same answer the description "All goods, crude or edible grade". In the present case, it is not even the case of the respondents that the goods imported by the petitioners do not answer the said description. The case of the respondents is solely based upon the end use of such goods, which is a condition that is not provided under the said exemption notification. Thus, in essence and substance, the respondents seek to read something additional in the notification which has not been provided therein, which is not permissible in law. Under the circumstances, there is substance in the contention advanced on behalf of the petitioners that the impugned show cause notice is based upon the Circular No. 40/2001Cus., dated 13 th July 2001, which has been quashed by this court. Under the circumstances, the contention that the present case is directly



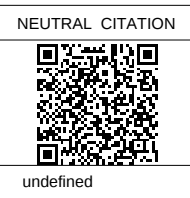
covered by the decision of this court in the case Inter Continental (India) v. Union of India, 2003 (154) ELT 37 (Guj.) as affirmed by the Supreme Court in Union of India v. Inter Continental (India), 2008 (226) ELT 16, holding that the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down, merits acceptance. On a totality of the facts emerging from the record, it is evident that the respondents seek to read into the exemption notification the requirements of the Circular No.40/2001 Cus., dated 13.07.2001, which has been set aside in the above decisions.

11. As regards the contention raised with reference to Notification No.21/2002 dated 01.03.2002 that based on the usage, different rates have been prescribed under the duty exemption notification, a perusal of the said notification discloses that wherever the Central Government thought it fit to impose a condition in respect of any particular class of goods, including a condition regarding



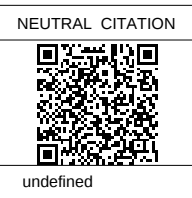
the end use of such goods, it has been specifically provided therein. Whereas in respect of the class of goods at serial no.57 of Notification No.12/2012, no condition has been provided and as such, no condition which has not been stipulated in the exemption notification can be read into it, with reference to some other notification.

12. In the aforesaid backdrop, it prima facie appears that the assumption of jurisdiction on the part of the second respondent by issuance of the impugned show cause notice is without any legal basis. The Supreme Court in the case of Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (supra) has held that the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, especially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. The said decision would apply on all fours to the present case. Accordingly, the contention that the petition is not maintainable does not merit acceptance.



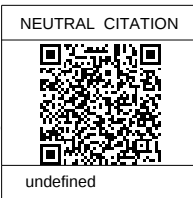
13. As regards the decision of the Supreme Court in the case of Union of India v. Guwahati Carbon Ltd. (supra) on which strong reliance has been placed by the learned counsel for the respondent, the same does not lay down any absolute proposition of law that in no case, viz. even where by the facts make out a case where the exercise of powers by the authorities is without jurisdiction or where the concerned authority has usurped jurisdiction without any legal foundation, the High Court should not exercise its plenary jurisdiction under Article 226 of the Constitution of India. Each case has to be examined on its own facts, and if on facts a case is made out for exercise of powers under Article 226 of the Constitution in the light of the principles propounded by the Supreme Court in this regard, the availability of an alternative remedy will not bar the exercise of powers under Article 226 of the Constitution.

14. In the light of the above discussion, the court is of the view that the matter requires consideration. Moreover, the petitioners have been able to make out a prima facie case and the



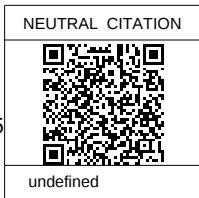
balance of convenience also lies in their favour inasmuch as if the respondents are permitted to proceed further they would have to unnecessarily face lengthy proceedings and undue harassment. Under the circumstances, the petitioners are entitled to interim relief as prayed for vide paragraph 19 (b) of the petition."

5. The petitioner no.1 is a company engaged in the manufacture of various personal care products, such as soap products, fatty acids, fatty alcohol etc. for which import of "crude palm kernel oil edible grade" was made. The petitioner imported "crude palm kernel oil edible grade" falling under CTH 15132110 declaring description as Crude Palm Kernel Oil (Edible Grade) paying NIL rate of duty in terms of Serial No. 57 of the Customs Notification No. 12/2012 dated 17.03.2012.

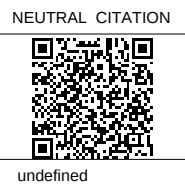
**SUBMISSIONS OF THE PETITIONER:**

6. Learned Senior Advocate Mr. Mihir Joshi for the petitioners submitted that the Circular No.40/2001-CUS dated 13.07.2001 was issued by the Central Board of Excise & Customs (For short "CBEC") with a view to explain the meaning of expression "Edible Grade" and "Edible Oil" appearing in erstwhile Notification No.17/2001-CUS dated 01.03.2001.

7. It was submitted that Circular No.40/2001 was issued directing the revenue authorities to read an end-use condition into Notification No.17/2001 on the premise that oils can be regarded as "edible grade" only if they are ultimately used for edible purposes as opposed to industrial application.



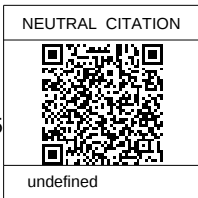
8. It was submitted that this Court in case of **Intercontinental (India) v. Union of India** reported in 2003 (154) ELT 37 while dealing with challenge to Circular No.40/2001 held that condition of end-use sought to be introduced through the circular of CBEC would amount to re-write the Exemption Notification which could not have been done because under the Customs Act, 1962 it was only the Central Government which was empowered to either issue or amend a Notification issued under section 25 of the Customs Act. Therefore, Circular No. 40/2001 was quashed and set aside. The Hon'ble Supreme Court also dismissed the appeal filed by the Revenue against the judgment and order passed by this Court quashing and setting aside Circular No.40/2001.



9. It was submitted that the petitioners have been regularly importing crude palm kernel oil of edible grade availing benefit of Nil rate of duty as per Notification No.21/2002-CUS dated 01.03.2002 (Sr.No.33A) and Notification No.12/2012-CUS (Sr. No.57) which reads as under :

| Sr. No.                 | Chapter of Heading or Sub-heading or tariff item      | Description of goods              | Standard rate | Additional duty rate | Condition no. |
|-------------------------|-------------------------------------------------------|-----------------------------------|---------------|----------------------|---------------|
| 33A of Notfn. 21/2002   | 1508<br>1509<br>1510<br>1512<br>1513, 1514<br>or 1515 | All goods, crude and edible grade | Nil           |                      |               |
| 57/12 of Notfn.12 /2012 | 1508<br>1509<br>1510<br>1512<br>1513, 1514<br>or 1515 | All goods, crude and edible grade | Nil           |                      |               |

10. Learned Senior Advocate Mr. Joshi invited the attention of the Court to Supplementary Note 1 to Chapter 15 of the

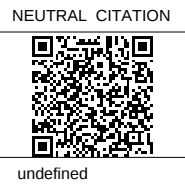


Customs Tariff Act, by which expression  
“edible grade” has been defined as under:

"1. In this Chapter, 'edible grade', in respect of goods (i.e. edible oil) specified in Appendix B to the Prevention of food Adulteration Rules, 1955 means the standard of quality specified for such goods in that Appendix."

11. Learned Senior Advocate Mr. Joshi thereafter referred to Appendix-B to the Prevention of Food Adulteration Rules, 1955 to point out that the standards of edible palm kernel oil have been specified at Sr No.A.17.21 of Appendix-B which reads as under:

“A.17.21. - Palm Kernel oil means oil obtained from sound palm kernel of the fruits of oil palm (*Elaeis Guineensis*) tree by the method of expression or solvent extraction. It shall be clear, free from rancidity suspended or other foreign matter, separated water, added colouring and flavouring substances or mineral oil. It shall conform to the



following standards, namely":

|                      |       |
|----------------------|-------|
| Butyro-refractometer | 35.3- |
| reading at 40oC      | 39.5  |

OR

|                          |         |
|--------------------------|---------|
| Refractive Index at 40oC | 1.4490- |
|                          | 1.4520  |

|              |             |
|--------------|-------------|
| Iodine value | (Wijs 10-23 |
| method)      |             |

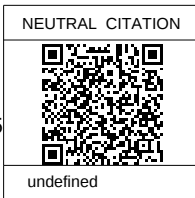
|                      |         |
|----------------------|---------|
| Saponification value | 237-255 |
|----------------------|---------|

|                       |          |
|-----------------------|----------|
| Unsaponifiable matter | Not more |
|                       | than 1.2 |
|                       | per cent |

|            |          |
|------------|----------|
| Acid value | Not more |
|            | than 6.0 |

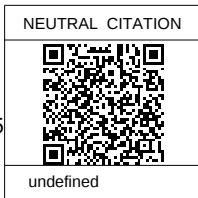
Further, if the oil is obtained by the method of solvent extraction, it shall be supplied for human consumption only after refining and shall conform to the standards laid down under item A.17.15. Additionally, it shall have Flash point (Penske-Marten closed method) not less than 250 degree C."

12. It was submitted that the customs authorities have drawn samples from each and every consignment of the goods imported by the petitioners and same were



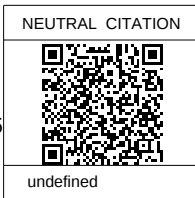
sent for testing to Customs Chemical Examiner who has in each and every case of import certified that the goods imported by the petitioners were conforming to the standards and provisions for palm kernel oil laid down under the Food Safety and Standards (Food Products and Food Addictive) Regulation, 2011 (For short "Regulations, 2011").

13. Reference was also made to statement giving particulars of Bills of Entry of the subject goods, sample numbers and conclusion of the Food Analyst in the Foods and Drugs Laboratory, Baroda. Reference was also made to specimen copies of the report of the Food Analyst and that of Port Health Officer, Kandla addressed to respondent no.3 -



Commissioner of Customs, Kandla.

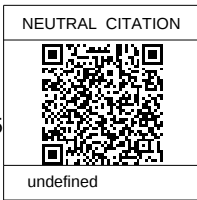
14. It was submitted that in the impugned show cause notice, there is no dispute about the correctness of any of the test reports, opinion of the Port Health Officer or the classification of the subject goods under the Customs Tariff or the fact that the subject goods were conforming to the standards and provisions of palm kernel oil under Prevention of Food Adulteration Rules, 1955 or under Regulations, 2011. The Prevention of Food Adulteration Act, 1954 and the Rules made thereunder were repealed with effect from 05.08.2011 and Food Safety and Standard Act, 2006 and the Rules and regulations made thereunder have been notified. It was submitted that Regulation No.2.2.1(21) of



the Regulations, 2011 is same as Entry A.17.21 of the Appendix-B to the Prevention of Food Adulteration Rules, 1955.

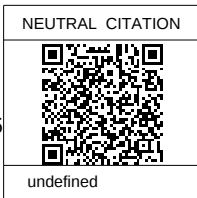
15. It was pointed out that search at the factory premises of the petitioners was conducted on 04.01.2013 at Mumbai and Panchnama was drawn at Kandla on 03.01.2013. The petitioners preferred Special Civil Application No.535 of 2013 for release of goods and by order dated 11.02.2013 passed by this Court, the goods were released on executing bond of full assessable value of goods and also furnishing bank guarantee of 5% value thereof.

16. It was submitted that samples drawn



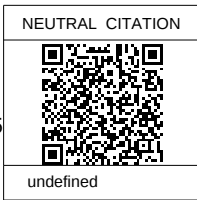
under the Panchnama were sent to Central Food Laboratory, Pune along with test memo dated 08.01.2013 to ascertain whether the same conforms to the standard of quality of edible grade or not. Director of Central Food Laboratory, Pune rendered opinion dated 17.01.2013 stating that samples of the goods imported by the petitioners conforms to the parameter of palm kernel oil as per Food Safety and Standards Act, 2006, Prevention of Food Adulteration Rules, 1955 and Regulations, 2011, however for making it fit for human consumption i.e. to make it edible, the goods must go through the process of refining and conforming.

17. Thereafter the impugned show cause notice was issued on 27.06.2013 by

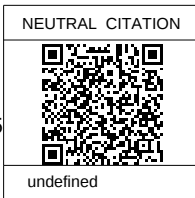


respondent no.2 for alleged duty evasion of Rs.464,00,61,628/- for wrongful availment of exemption Notification No.12./2012 by the petitioners. It was submitted that by letter dated 22.02.2014 the petitioners requested respondent no.2 to withdraw the show cause notice in light of the fact that the same is based solely on Circular No.40/2001-CUS dated 13.07.2001 which has been quashed and set aside by this Court and affirmed by the Apex Court, as continuation of the proceedings based on such circular would amount to overreaching the orders passed by the Court.

18. Learned Senior Advocate Mr. Mihir Joshi referred to the convenience compilation filed during the course of

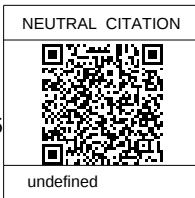


hearing and referred to the provisions of the Prevention of Food Adulteration Rules, 1955 in Part-IX for Conditions of sale and license as per Rule 49 of the Rules, 1955 which includes condition no.13 which provides for all edible oils, except coconut oil, imported in crude, raw or unrefined form shall be subject to the process of refining before sale for human consumption. It was therefore, submitted that condition for sale of edible oil for human consumption as provided in Rule 49 of the Rules, 1955 carves out an exception for import in crude, or raw or unrefined form that it shall be subjected to the process of refining before the sale for human consumption. It was submitted that however, when edible oil is not for human consumption, condition no.13 in Rule 49



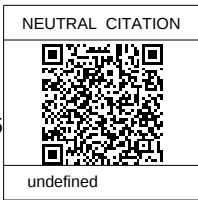
would not be applicable and the contention raised on behalf of the respondents that crude palm kernel oil edible grade is required to undergo the process of refining to avail the benefit of exemption under Notification No. 12/2012 is contrary to the decision of this Court in case of **Intercontinental (India) v. Union of India** (supra) whereby Circular No.40/2001 imposing similar condition was quashed and set aside.

19. Reference was made to Rule 69-A contained in Part-XV of the Rules,1955 for solvent extracted oils and edible flour. It was pointed out that Rule 69-A of the Rules,1955 provides for restrictions on use of solvent prescribing the tolerance limits. It was submitted that from the Hexane (Food solvent), the tolerance limit



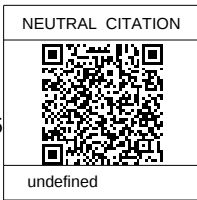
is mg.kg (ppm) of 5.00 for refined solvent extracted oils and fats. It was submitted that the standards prescribed in Rule 69-A is met by the goods imported by the petitioners.

20. Learned Senior Advocate Mr. Joshi thereafter referred to Appendix B to the Rules, 1955 para. A.17.15, which stipulates that "Refined Vegetable Oil" means any vegetable oil which is obtained by expression or solvent extraction of vegetable oil bearing materials, deacidified with alkali and/or physical refining and/or by miscella refining using permitted food grade solvents followed by bleaching with absorbent earth and/or activated carbon and deodorised with steam. It was therefore, submitted that the petitioners have imported crude palm



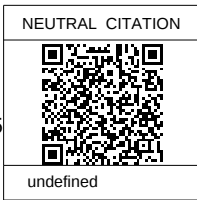
kernel oil and not refined vegetable oil which requires solvent extraction and therefore, reliance placed by the respondent on para A.17.21 of the Appendix B which stipulates that palm kernel oil means the oil obtained from sound palm kernel or the fruits of oil palm (*Elaeis Ginenesis*) tree by the method of expression or solvent extraction, is not correct. It was submitted that in case of the petitioners, method of solvent extraction is applied to obtain crude palm kernel oil which meets with the parameters prescribed in the aforesaid paragraph of the Appendix B.

21. It was submitted that whether the palm kernel oil is obtained by method of expression or solvent extraction, it remains in crude form, unless the same is



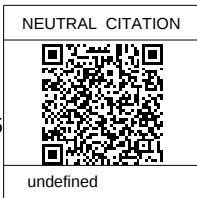
refined only in context of solvent extraction and if it is expressed then it has to conform to all the parameters as refined edible oil. It was further submitted that as per the provisions of the Rule, 1955 whether the oil is obtained by expression or extraction has to be refined except coconut oil which is imported whether crude or refined but has to be further refined , if the same is to be used for human consumption.

22. Learned Senior Advocate Mr. Joshi submitted that the respondent authorities could not have assumed the jurisdiction to issue the impugned show cause notice in view of Circular No.29/97-CUS dated 31.07.1997 which is issued to clarify the scope of term "vegetable oils of edible grade" as per Notification No.11/1997



dated 01.03.1997. It was therefore, submitted that as the goods imported by the petitioners being crude palm kernel oil of edible grade, it is immaterial whether it requires further process for human consumption or not to avail the benefit of exemption notification.

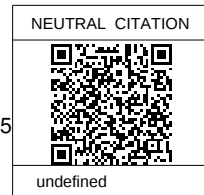
23. It was submitted that between the period 2010-2014, case of the petitioners would fall within the regime of Prevention of Food Adulteration Regulation and the Food Safety and Standards (Food Products and Food Addictive) Regulation, 2011 which contains para-materia provisions. In order to compare both the Regulations, it was pointed out that Regulation 16 of Regulations, 2011 refers to refined vegetable oil and Regulation 21 of Regulations 2011 refers to palm kernel oil



equivalent to para A.17.15 of Rules, 1955 pertaining to refined vegetable oil and para A.17.21 of Rules, 1955 pertaining to palm kernel oil of Appendix B containing the same provisions.

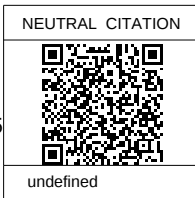
24. It was submitted that Regulation 2.3.14(10) of Regulations, 2011 refers to condition of sale which is equivalent to condition no.13 of Rule 49 of the Rules, 1955.

25. Reference was also made to Blended Edible Vegetable Oil specifications issued by Bureau of Indian Standards which provides that without processing, crude edible oil is not fit for human consumption but it is still edible grade because others are chemical and they are not edible grade at all.



26. Reference was also made to The Pulses, Edible Oilseeds and Edible Oils (Storage Control) Order, 1977 wherein section 2(g) of the said Order defines "Edible Oil" means any oil used, directly or after processing, for human consumption and includes hydrogenated vegetable oil. It was therefore, submitted that the crude palm kernel oil imported by the petitioners is not "edible oil" but it is "edible grade" and to make it edible oil, it would require further processing.

27. Reliance was placed on the decision of Calcutta High Court in case of **Supreme Oil Industries Limited & anr. v. Special Secretary, Finance (Taxation) Department, Government of West Bengal & ors.** reported in 2007 SCC OnLine Cal 191 rendered in

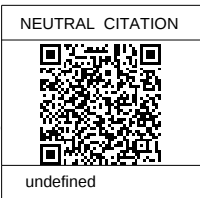


relation to rice bran oil of edible grade wherein Hon'ble Calcutta High Court has observed as under:

"3. The said writ application was contested by the State-respondent by filing affidavits-in-opposition and the sum and substance of the defence was that Edible Oil means that category of Oil, which is fit for direct human-consumption. According to the State-respondent, the Oil, which is made fit for human-consumption by further processing, cannot be said to be "Edible" in order to get the benefit of the Scheme.

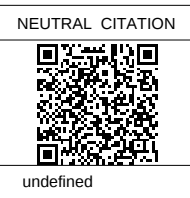
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11. After hearing the learned Counsel for the parties and after going through the materials on record, we find that in the Scheme there is no definition of "Edible Rice Bran Oil". However, from the materials on record, we find that there are three grades of Rice Bran Oil, namely, Refined Grade, Raw Grade-1 and Raw Grade-2. The Refined Grade of Rice Bran Oil is fit for direct human-consumption whereas Raw Grade-1 is of edible variety and is rendered fit for human-consumption after further processing. On the other hand, the Rice Bran Oil of Raw Grade-2



category is not edible at all and is used only for industrial purpose.

12. The Rice Bran Oil Raw Grade-1 is used by the Vanaspati industry. The various Vanaspati manufacturers refer to the said Rice Bran Oil of Raw Grade-1 is Edible Rice Bran Oil. The Directorate of Vanaspati, Vegetable Oils and Fats of the Government of India considers Rice Bran Oil Raw Grade-1 obtained by the method of solvent extraction as Edible Oil permitted to be used in the manufacture of Vanaspati as would appear from the letter dated March 22, 1995 issued by the said Directorate. By a notification dated March 1, 1997, the Government of India granted Custom Duty exemption in respect of imported Vegetable Oil of Edible Grade. In this context, a question arose as to whether the same covered only those Vegetable Oils, which were fit for human-consumption as imported or also included the Vegetable Oil, which is rendered fit for human-consumption after further processing. It further appears that the Government of India by a notification dated July 31, 1997 made it clear that the term "Vegetable Oils of Edible Grade" would cover Vegetable Oils, which

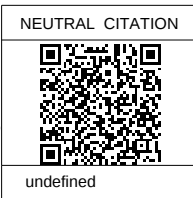


was fit for human-consumption at the time of import as also the Vegetable Oils, which were rendered fit for consumption after processing. It was further clarified that the benefit of Duty Exemption would be admissible so long as the imported oil was used for Edible purposes even after refining.

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20. In our view, there being no definition of edible oil within the four corners of the Scheme, the fact that a particular type of oil cannot be used for immediate direct human-consumption is immaterial for the purpose of interpreting the Scheme. Even the report of the Jawaharlal Nehru Technological University itself shows that Rice Bran Oil Grade-1 is edible oil. Therefore, the Special Secretary totally misread those observations made in the letter written by the Jawaharlal Nehru Technological University where Rice Bran Grade-1 Oil has been described as edible oil notwithstanding the fact that it is not fit for direct human-consumption."

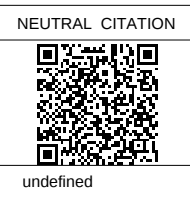
28. Reliance was also placed on the decision of Hon'ble Supreme Court in case



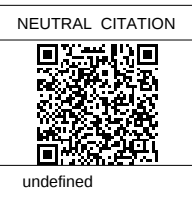
of **Commissioner of Commercial Taxes and others v. Supreme Oil Industries Ltd.** (Order dated 29.04.2009 passed in Civil Appeal No.2924 of 2009) whereby decision of Calcutta High Court was confirmed by the Hon'ble Apex Court.

29. Learned Senior Advocate Mr. Joshi also relied upon the decision of Hon'ble Karnataka High Court in case of **Vishista Solvent Oils Pvt. Ltd. v. Deputy Commissioner of Commercial Taxes (Assts) and others** reported in (2001) 121 STC 492 (Kar) wherein it is held as under :

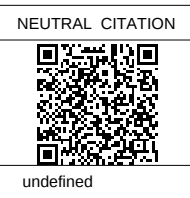
"7. In the case of solvent extracted oil also, impurities are removed, but the basic Character of oil remains. Edible oil is a genus which has both the species, viz., refined and non-refined beside the hydrogenated oil. The Legislature has not contemplated any difference while specifying the edible oil in Part E in the Second Schedule between refined



and non-refined and same rate of tax continues from April 1, 1988 for both the species. Thus, it can be considered that in popular sense the edible oil would include refined oil as well as non-refined oil. The Control Order 1977 also covers within the sweep of edible oil all those oils which are used directly for human consumption or which could be used after processing. The Solvent Extracted Oil, De-oiled Meal and Edible Flour (Control) Order, 1967 has regulated the production and sale of solvent extracted oil and thus, it is only after the process through which, the solvent extracted oil has to go, it could be sold for human consumption, i.e., after refining. It could not have been the intention of the Legislature, that refined edible oil if subjected rate of tax, and the petitioner has to pay higher rate of tax on the non-refined oil and then he is deprived of lesser rate of tax. The Karnataka Sales Tax Act has not defined edible oil and even if the definition, in common parlance, is taken into consideration, then, it is the oil produced from a particular seed which is considered as edible oil. While extracting oil from the oil seed, different process of extractions are employed. There may be even a situation where the

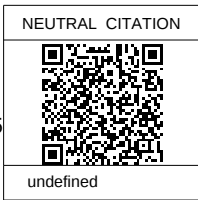


oil seed is crushed and no oil is taken at the stage any by a solvent extraction process, the entire oil is extracted. In another process, after crushing, certain oil is obtained and the residue remained in the oil cake is extracted by solvent extraction process. Even different machinery used for expellers may have the potentiality to extract different percentage of oil. The oil extracted from the expeller, though could be used directly for human consumptions, but contains impurities. Similarly, the oil extract from the oil cake also contains impurities, more particularly of hexane which is the solvent and the oil so obtained is known as solvent extracted oil. The Control Order prohibits sale of solvent extracted oil for direct human consumption. Solvent Extracted Oil, De-oiled Meal and Edible Flour (Control) Order, 1967 defines the solvent extracted oil as vegetable oil in any form obtained by the use of solvent. In the public interest, the Control Order prohibits the sale of such solvent extracted oil directly for human consumption unless it is refined. Even if the oil which is obtained from crushing of oil-seed, the Legislature may restrict to sell it unless it is refined.



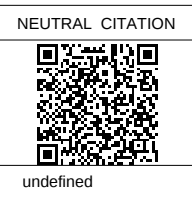
Hence some percentage of impurity always remains even in the oil which is obtained by the process other than the solvent extract process. The basic character of the oil which is obtained from crushing/expeller from the seed as well as the oil obtained from the oil cake remains the same, except, to the extent of impurity of hexane. It is for this reason that there is a prohibition for direct sale of such oil. Refining has been considered as not changing the basic character of the oil and as such, the solvent extracted oil cannot be considered as not falling within the proper category of edible oil."

30. Learned Senior Advocate Mr. Joshi referred to Explanation (2) of Notification No. 115/86-Central Excise-Tariff dated 01.03.1986 to draw an analogy wherein it is explained that rice bran oil of edible grade means the rice bran oil which conforms to the standards of quality of edible oils specified for rice bran oil in the Prevention of Food Adulteration



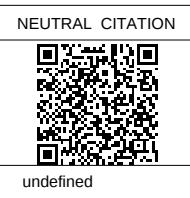
Rules, 1955 under the Prevention of Food Adulteration Act, 1954 as amended from time to time. It was submitted that similarly for crude palm kernel oil of edible grade which conforms to the standards of quality of edible oil specified for palm kernel oil in the aforesaid enactments would be entitled to be classified as of edible grade falling in Entry 33A of the Notification No.21/2002 or Entry no.57 of the Notification No. 12/2012 to avail the benefit of exemption notification.

31. Learned Senior Advocate Mr. Joshi also referred to the clarification issued by the Ministry of Finance dated 09.04.1987 in F. No.332/55/86-TRU in relation to the rice barn oil of edible grade wherein it is stated as under:



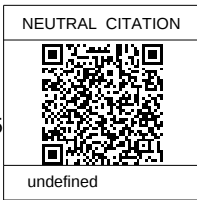
"5. Officers of the Directorate of Vanaspati, Vegetable Oils and Fats have explained that standard under Rule 5 (extracts of the relevant standard A. 17.23 is enclosed) for "articles of food" and it will not be reasonable to stipulate that the raw materials for vanaspati or the in-process samples down for standard A. 17.23 is applicable to oil sold for direct human consumption is incorporated in the standard itself. Moreover, the standard for the marketed product namely, vanaspati is also laid down in the PFA Rules separately and as such there is no reason why In-process samples should meet the requirement under standard A.17.23.

6. Rice bran oil is extracted by solvent extraction method. The raw oil can be categorised into two different qualities, namely, that fit for refining for direct human consumption or use in the manufacture of vanaspati and the second grade which may be used only for industrial purposes like manufacture of soap. The standard for quality of oils permitted for use in the



manufacture of vanaspati is stipulated in Rule 67(3) of the PFA Rules according to which the required standard is the standard for "Raw Grade I" for solvent extracted oils laid down in Rule 9(2) of the Solvent Extracted Oil Deoiled Meal and Edible Flour Control Order, 1967. Extract of the relevant rules and the standard are enclosed. Since the notification lays down the standard for raw material used in the manufacture of vanaspati, the term "edible oil" used in the explanation to the notification has to be understood as the oil which can be processed for edible purposes as distinct from that which is permitted for use in industrial purposes only."

32. Learned Senior Advocate Mr. Joshi therefore, submitted that the crude palm kernel oil edible grade would fall in Entry No.33A attracting Nil rate of duty under the provisions of the Act of 1985 as per Notification No. 21/2002-CUS dated 01.3.2002 which is equivalent to Entry

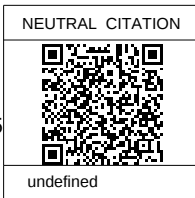


No.57 attracting 2.5% of the duty as per Notification No.12/2012-CUS dated 17.03.2012 instead of falling in Chapter XV - 15132110 attracting 100% duty. It was therefore, prayed that impugned show cause notice being without jurisdiction may be quashed and set aside.

### **SUBMISSSIONS OF THE RESPONDENTS**

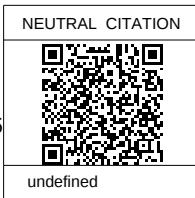
33. On the other hand learned advocate Mr. Ankit Shah for the respondents submitted that the impugned show cause notice is not solely based upon Circular No.40/2001 but it also pertains to mis-declaration of the description of the imported goods by the petitioners to avail the wrongful exemption from customs duty.

34. It was submitted that crude palm

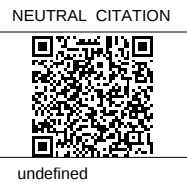


kernel oil imported by the petitioners is not fit for human consumption without further process as per the test reports of Central Food Laboratory, Pune and Port Health Officer, Port Health Organisation, Kandla and as per order passed by Controller, Rationing and Director Civil Supply, Mumbai. It was submitted that if imported crude palm kernel oil after processing is used for edible purpose then only it would be entitled to duty exemption at different rates under the same tariff entry as per Notification No.12/2012 dated 17.03.2012.

35. It was submitted that exemption Notification No.12/2012 allows concessional rate of duty to crude oil under CTH 1513 when crude palm kernel oil under CTH 1513 were imported for edible

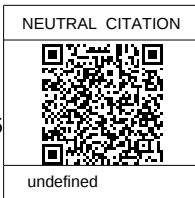


purpose. It was therefore, submitted that the contention of the petitioners for availing the benefit under exemption notification that no end-use is required to be mentioned is not tenable as such exemption is available for usage of edible oil and for that purpose crude oil which requires further processing for human consumption is not entitled to concessional rate as per Notification No.12/2012 and crude palm kernel oil which is imported for industrial purpose and not for edible purpose would not be entitled to get exemption of concessional rate of duty as such notification is required to be read with Supplementary Note 1 to Chapter 15 which refers to the edible grade according to Appendix B to Rules 1955 which provides that the end-use



of the product is engrained into the description itself and accordingly, the crude oil of normal grade and edible grade of oil meant for human consumption can only be exempted.

36. It was further submitted that the respondents have assumed the jurisdiction for issuance of the show cause notice as admittedly, the petitioners have imported crude palm kernel oil for industrial purpose and the goods imported by the petitioners can only be used after refining and conforming to the standards as laid down in Regulation 2.2.1(16) of Regulations, 2011 and additional requirement for flash point not less than  $250^{\circ}\text{C}$  and hexane content not more than 5 ppm.

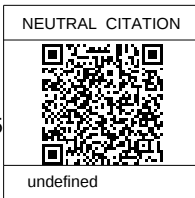


37. Learned advocate Mr. Shah also referred to the opinion of Food Analyst at page 57 of the paper book which clearly provides that the imported goods can be used only after refining and conforming to the standards as laid down under Regulation 2.2.1(16) of the Regulations, 2011.

38. It was therefore, submitted that by no stretch of imagination it can be said that the goods imported by the petitioners is entitled to notification for concessional rate of duty.

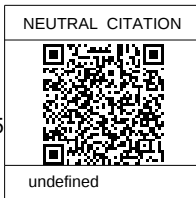
**ANALYSIS:**

39. Considering the submissions made by the learned advocates for the parties, short question which arises for consideration is whether the petitioners



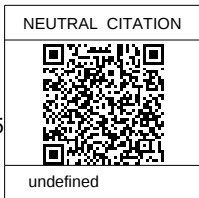
are entitled to the benefit of Notification No.12/2012 by which crude palm kernel oil edible grade imported by the petitioners for industrial purpose would be subject to levy of customs duty at Nil rate or reduced rate or not.

40. The customs duty is leviable as per the provisions of section 12 of the Customs Act, 1962 (for short 'the Act') on all goods imported into or exported from India. When such goods enter the territorial waters of India and the Act does not differentiate the taxable events for different purpose. As per section 12 of the Act, customs duty is levied at such rate as may be specified under the Tariff Act. The customs duty is chargeable upon the assessment or quantification of the amount of duty payable under sections 14

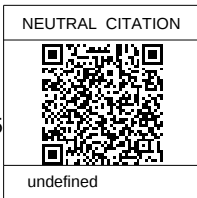


and 15 of the Act pertaining to valuation of goods for the purpose of assessment and the date of determination of rate of duty and tariff valuation of imported goods respectively.

41. Section 25 of the Act provides for power to grant exemption from duty and sub-section(1) of section 25 of the Act empowers the Central Government to issue notification in the official gazette if it is necessary in the public interest, granting exemption either absolutely or subject to such conditions to be fulfilled before or after clearance as may be specified in the notification in relation to specified goods either wholly or partly duty of customs. Sub-section (2) of section 25 of the Customs Act provides for passing of special-order granting

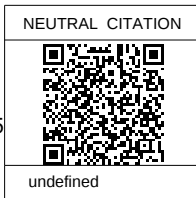


exemption from payment of duty for reasons to be stated in such order regarding any goods, of strategic or secret nature or for charitable purpose on which duty is leviable. Sub-section (3) of section 25 of the Customs Act provides for levy of duty on specified goods at a rate expressed in form or method different from form or method in which the statutory duty is leviable. As per sub-section (4) of section 25, the notification issued under sub-section (1) shall come into force on the date of its issue by the Central Government for publication in Official Gazette unless otherwise provided which assumes importance in view of the provisions of section 159 of the Act which specifically provides that such notification as may be issued under



section 25 of the Act shall be laid before each House of Parliament and the period for which it should be so laid and permitting modification by the House. Hence on conjoint reading of sections 25 and 159 of the Act it is clear that notification issued under section 25 of the Act has a force of a statutory levy. So far as the import of crude palm kernel oil edible grade by the petitioners is concerned, same is covered by Entry No.33A under CTH 1513 availing Nil rate of duty as per Notification No.21/2002-CUS dated 01.03.2002 which is equivalent to Entry No.57 as per Notification No.12/2012-CUS.

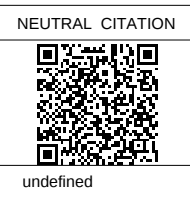
42. Entry No.33A as per Notification No.21/2002 refers to all goods, crude and edible grade prescribing Nil rate whereas Entry No.33B provides for all goods,



refined and edible grade prescribing rate of duty at 7.5%. Entry No.33A is inserted by Notification No.42/2008-CUS dated 01.04.2008 by amending Notification No.21/2002.

43. Entry No.57 in Notification No.12/2012 is same as Entry No.33A as amended by Notification No.21/2002. However by Notification No.2/2013-CUS dated 23.01.2013, rate of duty is prescribed at 2.5% instead of Nil rate of duty. Therefore, the petitioners were paying the duty of 2.5% instead of 7.5% after 2013 instead of Nil rate of duty.

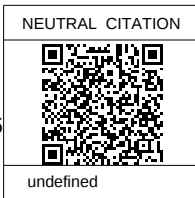
44. Section III of the Tariff Act includes Chapter 15 pertaining to Animal or Vegetable Fats and Oils and their Cleavage products; prepared edible fats;



animal or vegetable waxes and Supplementary Note 1 in the said Chapter explains “edible grade” in respect of goods i.e. edible oil specified in Appendix B to the Prevention of Food Adulteration Rules, 1955 means the standard of quality specified for such goods in that Appendix.

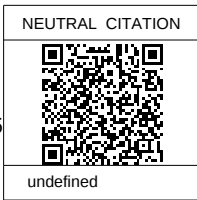
45. As per the interpretation of the respondents, crude palm kernel oil would fall under CTH 15132110 attracting 100% rate of duty as it is not fit for human consumption though it may be of an edible grade. Therefore, it is necessary to refer to Appendix B to Prevention of Food Adulteration Rules, 1955 which is extracted here-in-above.

46. Para no. A.17.21 Appendix B pertains



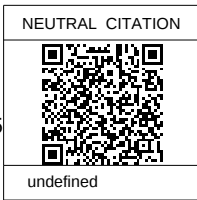
to palm kernel oil means oil obtained from sound palm kernel of the fruits of oil palm (*Elaeis Guineensis*) tree by method of expression or solvent extraction in the prescribed method therein. Similar provision as per Regulation, 2011 which is equivalent to palm kernel oil is in regulation 2.2.1(21).

47. Report of the Food Analyst, Port Health Officer placed on record clearly shows that the goods imported by the petitioners i.e. crude palm kernel oil edible grade conforms the standard and provisions laid down in regulation 2.2.1(21) of the Regulation, 2011 with a rider that oil can be used for human consumption only after refining and conforming to the standards as laid down under Regulation 2.2.1(16) and additional



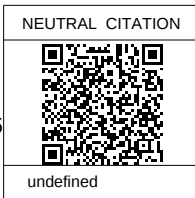
requirement for flash point not less than 250°C and hexane content not more than 5 ppm for human consumption.

48. Thus, as per the Supplementary Note 1 to Chapter 15 of the Tariff Act, crude palm kernel oil edible grade imported by the petitioners fulfills the criteria prescribed in Appendix B which is equivalent to Regulation 2.2.1(21) of the Regulations, 2011. Similarly, the Director, Central Food Laboratory, Pune has also conveyed correction in the report placed on record which shows that the imported crude palm kernel oil edible grade by the petitioners conforms the parameters of palm kernel oil as per Regulations, 2011. However, it is categorically stated that for making it fit for human consumption i.e. edible, it



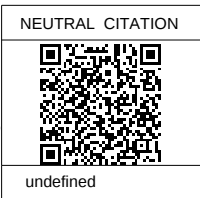
is required to be refined further. Relying upon such opinion, the respondents have issued the impugned show cause notice calling upon the petitioners to show cause as to why the goods imported by the petitioners should not be subjected to 100% customs duty as the crude palm kernel oil though claimed as edible grade is not fit for human consumption without further process of refinement of such goods under CTH 15132110 as the petitioners have imported such goods for manufacture of industrial fatty acids for manufacture of soap, etc and therefore, it is admittedly for commercial purpose and not for human consumption.

49. The stand taken by the respondents was that Circular No.40/2001 provides that crude palm kernel oil imported of edible



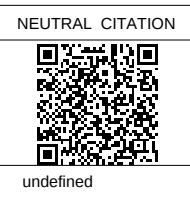
grade is not liable to benefit of exemption notification unless it is required for further process. Vires of such notification was challenged before this Court in case of **Inter Continental (India) v Union of India** (supra) which was quashed and set aside by this Court wherein after considering the provisions of Prevention of Food Adulteration Act, 1954 and the requirement of end-use prescribed in para no. 6(c) of Circular No.40/2001 it was observed as under:

“15 As can be seen from Notification No.17, the Government was conscious of the provision of Section 25(1) of the Act and has specifically prescribed condition in relation to some entries in column No.6 of the Table. It is not necessary for us to refer to various conditions specified in the Annexure to the Notification but by way of illustration entry at Sr.No.43 will be sufficient to show how provisions of Section



25(1) of the Act operate. In column 6 pertaining to conditions, condition No.6 has been prescribed for entry No.43, which deals with " wine, for use as sacramental wine" and the rate of concessional duty is 35%. Condition No.6 in the annexure reads; " if the importer furnishes undertaking to the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be, that the wine shall be used as sacramental wine". Therefore, a condition pertaining to a stage after clearance has been imposed as provided in the section. Similarly, condition Nos. 12, 17, 18 and 40 are the instances of situations where end-use is stipulated as being pre-requisite for claiming exemption as part of the Notification No.17. In fact, in condition No.40, a period of two years is available from the date of importation or within such extended period as the officer may allow, in which the importer is required to produce necessary certificate.

16 In relation to entry at Sr.No.29, no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr.No.34 or even in entry No.28. If the Notification No.17 has not provided for any condition, in our opinion,



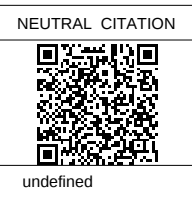
subsequent circular cannot impose such a condition as the same would tantamount to rewriting Notification No.17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with section 159 of the Act, a notification under section 25 of the Act requires publication in the official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No.17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to the executive to bypass/override the legislature and cannot be countenanced.

17 Lot of debate took place in relation to the actual wordings and the meaning of entries 28, 29 and 34 of Notification No.17. The said entries read as under:

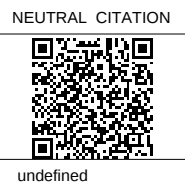


| Sr. No. | Chapter of Heading No. or sub-heading No. | Description of goods                                                                                                        | Standard rate | Additional duty rate | Condition No. |
|---------|-------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|---------------|----------------------|---------------|
| 28      | 15                                        | Edible oils falling under Heading No., 15.08, 15.11, 15.12, 15.13, 15.14 or 15.15                                           | 85%           | -                    | -             |
| 29      | 15                                        | All goods (other than edible oils falling under heading No. 15.07, 15.08, 15.09, 15.10, 15.11, 15.12, 15.13, 15.14 or 15.15 | 35%           | -                    | -             |
|         |                                           | X                                                                                                                           | X             | X                    | X             |
| 34      | 1511.10                                   | Crude palm oil and its fractions, of edible grade, in loose or bulk form                                                    | 75%           | -                    | -             |

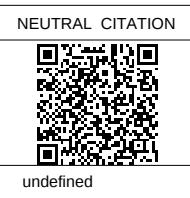
18 As can be seen from the entries, entry no.28 deals with Edible oils falling under heading viz. Ground-nut Oil, Palm Oil, Sunflower seed, Safflower or



cotton seed oil, Coconut oil and others as mentioned in 15.13, Rape, colza or mustard oil and other fixed vegetable fats and oils. On the other hand, entry No.29 talks of All goods (other than Edible oil) falling under various heads mentioned in entry No.28 as well as headings dealing with Soya-bean oil, Olive oil and other oils obtained solely from olives. If we compare entry No.34 dealing with crude palm oil and its fraction of Edible grade in loose or bulk form and column No.2 of the Table which shows sub-heading 1511.10 it can be observed that the said sub-heading 1511.10 is absent in entries 28 & 29. In view of this situation it is apparent that entry No.34 carves out an exception to Entry No.28 and has no relevance with Entry No.29. Entry No.28 deals with Edible oils falling under various headings and sub-headings and one of the headings is 15.11 which deals with Palm oil and its fractions whether or not refined but not chemically modified, while sub-heading 1511.10 deals with Crude oil i.e. Crude palm oil. When one reads entries 28 and 34 in juxta position, it is apparent that entry No.28 pertains only to edible oils falling under specified sub-headings and entry No.34 is an exception carved out

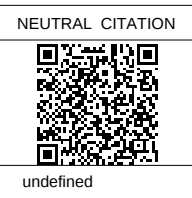


from that entry as regards Crude palm oil of edible grade. In relation to entry No. 29, it pertains to All goods other than edible oils i.e. goods envisaged by entry No.29 are those which do not fall either in entry No.28 or in entry No.34. If that be so, we have no doubt and that is the position, it is not possible to accept the contention of revenue that goods falling under entry No.29 should not be made liable to concessional rate of duty i.e. 35% but should be treated as falling under entry No.34, if the importer fails to establish that though the goods are other than edible oils at the time of import, yet importer should establish that they shall not be refined or processed to make them of edible grade, in other words, the importer should establish end use to the satisfaction of the proper officer. There is one more reason why this course of action proposed by the revenue cannot be accepted. As can be seen from comparison of entry No.29 and entry No.34, though there are various types of oils mentioned in entry No.29 only Crude palm oil of edible grade is brought under entry No.34 and the circular is only in relation to the said item viz. Crude palm oil. Thus, in effect All goods (other than edible oils) falling under

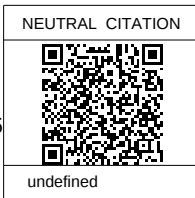


different headings except 15.11 can be imported without any such condition of end-use being imposed upon an importer. Only in relation to heading No.15.11 relating to Palm oil, the condition is being imposed upon an importer to establish the end-use for claiming benefit of concessional rate of duty under the Notification No.17. There is no logic, no rationale, much less any basis for such a treatment to only one category of oil which otherwise falls under the same classification under the Tariff Act.

19. Mr.Patel during the course of discussion referred to the provisions of Prevention of Food Adulteration Act,1954 as well as Rules thereunder with special reference to Section 6 of the said Act and Rule 5 which defines standards of quality on various articles as specified in Appendix "B" to the Rules. Our attention was invited to various standards set out in Appendix "B" to urge that only slight difference was there between the different kinds of Oils for the purpose of ascertaining whether oil was of edible grade or not. It is not necessary for our purpose to deal with the various technical aspects laid down in Appendix "B" for the simple reason that it is an admitted position between the

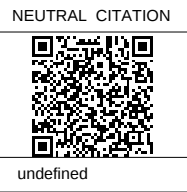


parties that when the imported goods entered territorial waters of India, the Boarding Officer had drawn samples of the product for test in the presence of the representative of the Master of Vessel, the Shipping Agent and representative of the Importer; and such samples had been sent for testing to the Chemical Examiner, Customs House, Kandla, who has opined that the same does not conform specification for Crude Palm oil (Edible grade) as per IS-8323-E-1977. It appears that the said sample was also forwarded through the Referral Hospital & Community Health Centre, Mundra-Kutch, to the Public Analyst, Food & Drug Laboratory, Vadodara for opinion. He has opined to the effect that the sample conforms to the standards and provisions laid down under the Prevention of Food Adulteration Rules, 1955, for Palm Oil and cannot be used as such for human consumption. Therefore, once the competent authority who is technically qualified to tender opinion in relation to the technical standards prescribed under the provisions of Food Adulteration Act and Rules thereunder has tendered his opinion it would not be open to any one to take a contrary stand, unless and until such technical opinion is displaced by specific



and cogent evidence in the form of another technical opinion. Merely by approaching the matter by stating that the goods could be converted into Palm oil of edible grade by carrying out certain processes, the Respondent No.3 who is an officer of the department cannot displace the report of technical expert, nor can he insist that inspite of such report the importer must establish that end-use of the product shall not be other than one as regards entry in which the goods admittedly fall at the time of import.

20. The impugned circular No.40/01 in paragraph 6(c) requires that the end-use certificate shall have to be produced by the importer from the Assistant/Deputy Commissioner of Central Excise having jurisdiction over the factories of soap manufacturers (or other industrial application for which the vegetable oil is claimed to have been used) and such certificate is produced before the customs authority within a period of three months or a period as may be extended by the Commissioner of Customs on being requested by the importer. It is further stated in the said subparagraph that on failure of importer to produce such certificate within a specified time frame immediate recovery

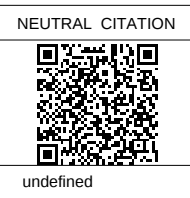


action of differential amount be initiated. The earlier paragraph i.e. sub-paragraph (b) of paragraph 6 of the circular states that even after the report of testing of vegetable oil and finding that the consignment is not conforming to the standards prescribed under the PFA Act and Rules thereunder, the provisional assessment may be made at the concessional rate of duty and the goods may be permitted to be moved on execution of bond for establishing end-use of the oil for industrial use as claimed and the bond shall cover the differential duty liability between the industrial and edible grade oil. Further more, depending upon whether the import is by an actual user manufacturer or trader security/bank guarantee amounting to 25% or 100%, as the case may be, of the bond value shall be taken. Mr. Patel, learned Counsel appearing on behalf of the respondents submitted in relation to this part of the circular that these safeguards have been prescribed so as to uniformly assess persons importing oils for industrial use only and to prevent misuse of imported oils being used for edible purpose after processing, on payment of concessional rate of duty. According to him, in case of a trader, if the goods are sold to



'A' and further 'A' sells those goods to 'B', 'B' to 'C', 'C' to 'D' and so on, the importer trader shall have to produce the end-use certificate from the last such purchaser in the chain and the certificate shall have to be from the Assistant/Deputy Commissioner of Central Excise having jurisdiction over last such purchaser. It is beyond our comprehension as to how can a trader be expected to follow the goods which he has already sold off and which might change hands in series of transactions. To expect such an importer trader to produce a certificate of end-use from an officer of Central Excise, having jurisdiction over the purchaser who is the last in the chain of transaction is casting a burden which if not impossible is impracticable to say the least. At least such a requirement/condition cannot be read in Notification No.17 by virtue of the impugned Circular No.40/2001."

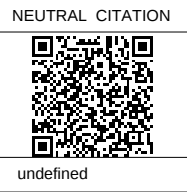
50. Hon'ble Apex Court by judgment and order dated 23.04.2008 rendered in Civil Appeal No.6529 of 2002 upheld the aforesaid decision of this Court by observing as under:



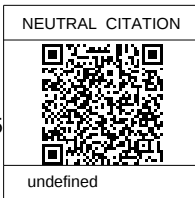
"4. It may be mentioned here that the samples taken from the imported crude oil were sent for testing to the Chemical Examiner, Customs House, Kandla and Public Analyst, Food & Drug Laboratory, Vadodara for their opinion to ascertain as to whether the oil is fit for human consumption or not. Both the laboratories opined that the imported oil was not fit for human consumption.

5. The High Court by the impugned order has accepted the writ petition by holding that the Central Board of Excise and Customs could not, by issuing a circular subsequent to the issuance of the notification, add a new condition thereby restricting the scope of the exemption notification. It was held that the impugned Circular No. 40/2001-Cus., dated 13-7-2001 being contrary to the Notification No. 17/2001-Cus., dated 1st March, 2001 could not be sustained as it cannot override the said notification. In para 16, the High Court observed as under:

"In relation to entry at Sr. No. 29 no condition is prescribed. Similarly no condition is prescribed in relation to entry at Sr. No.



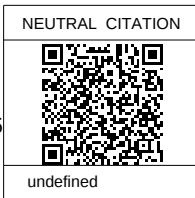
34 or even in entry No. 28. If the Notification No. any condition, in our opinion, subsequent circular cannot impose such a condition as the same would No. 17 has not provided for tantamount to rewriting Notification No. 17 or in other words legislating by circular, which is not permissible in law. As can be seen from the relevant provisions with special reference to Section 25 read with Section 159 of the Act, a notification under Section 25 of the Act requires publication in official gazette as well as requires tabling before both the Houses of Parliament and if that exercise has been carried out without any condition being imposed in the Notification No. 17 it would not be permissible to permit revenue to impose such condition by way of circular. If the revenue is allowed to undertake such an exercise, the requirement of publication in official gazette and laying a notification gazette and laying before each House of the Parliament would become nugatory and such a course of action is not envisaged by the Act. It would give licence to



the executive to  
bypass/override the  
legislature and cannot be  
countenanced."

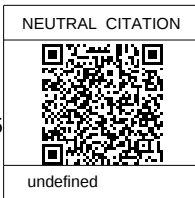
6. We entirely agree with the view taken by the High Court that the department could not, by issuing a circular subsequent to the notification, add a new condition to the notification thereby either restricting the scope of the exemption notification or whittle it down."

51. In view of above settled legal position, the respondents could not have assumed the jurisdiction to issue the impugned show cause notice on the same subject matter considering the end-use of the goods imported by the petitioners which was struck down by the Court being part of the Circular No. 40/2001. As held by this Court and upheld by the Hon'ble Apex Court, the Revenue was not held to be justified for treating the goods falling under Entry 29 equivalent to Entry 33A and



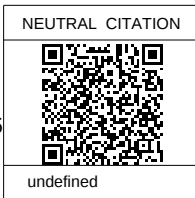
Entry 57 in facts of the case and made liable to concessional rate of duty should be treated as entry falling under CTH 15132110 applying 100% of the customs duty as the petitioners have admittedly imported the goods which is not fit for human consumption as crude palm kernel oil edible grade which requires further processing and refining to make it edible and unless the petitioners establish the end-use to the satisfaction of the respondents, the insistence for levy of customs duty on the basis of end-use for claiming benefit of concessional rate of duty under Notification No.12/2002 read with Notification No.21/2002 cannot be sustained.

52. Reliance placed on behalf of the petitioners on Circular No.29/97-CUS dated



31.07.1997 also throws light with regard to word "edible grade" used in Chapter 15 and Entry No.33A/57 in notifications of exemption where it is clarified that the term "vegetable oil of edible grade" appearing in Notification No.11/97 i.e. as to whether the term will cover only those vegetable oils which are fit for human consumption as it is imported or it will also include the vegetable oils which are not fit for human consumption at the time of import but will be fit for human consumption after further processing as under:

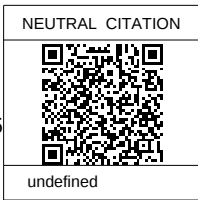
"3. The matter has since been examined in consultation with the Ministry of Food, Department of Food, Directorate of Vanaspati, Vegetable Oils and Fats, Ministry of Civil Supplies, Consumers Affairs and Public Distribution and Department of Economic Affairs. It is clarified that the term 'vegetable oils of edible



grade' will cover vegetable oils which are fit for human consumption at the time of import as also the vegetable oils which are fit for human consumption after further processing. The benefit of duty exemption is admissible so long as the oil imported is used for edible purposes, even after refining. Pending cases of assessment may be finalised on the basis of above clarification."

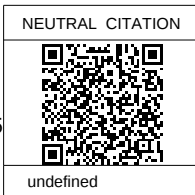
53. From the above clarification, it is clear that benefit of duty exemption is admissible so long as oil imported is of edible purpose as the term "vegetable oils of edible grade" will cover the vegetable oils which are fit for human consumption at the time of import as also vegetable oils which are not fit for human consumption requiring further processing making fit for human consumption.

54. Therefore, in facts of the case, at

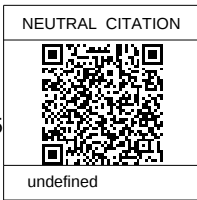


the time of importation it is to be seen as to whether crude palm kernel oil is of edible grade or not. Therefore, moot question to be considered is as to whether crude palm kernel oil imported by the petitioners was of edible grade or not and it is not material as to whether it requires no process or it requires further process to make it fit for human consumption.

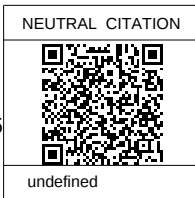
55. During the course of hearing, the learned Senior Counsel Mr. Joshi for the petitioners referred to the provisions of Prevention of Food Adulteration Act, 1954 and the Rules which is substituted by Food Safety and Standard Act, 2006 and Rules and Regulations, 2011 as well as Indian Standard pertaining to blended edible vegetable oils- specifications and the



Pulses, Edible Oilseeds and Edible oils (Storage Control) Order 1977 to demonstrate that crude palm kernel oil imported by the petitioners is of edible grade as per specifications prescribed in para no. 2.2.1(21) of the Regulations, 2011 as compared to para 2.2.1(16) which refers to refined vegetable oil which includes palm kernel oil at item No.(xix). It was pointed out from the record that crude palm kernel oil imported by the petitioners is obtained by the method of expression or solvent extraction and method of expression is as per Indian Standard Blended Edible Vegetable Oils- Specifications which provides definition of edible oil and means any oil used, directly or after processing for human consumption and includes hydrogenated

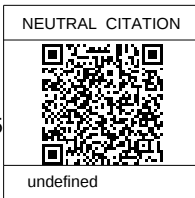


vegetable oil. However, it was pointed out that edible oil is different than crude edible grade oil which may be subject to the process of refining before sale for human consumption. Reference was also made to Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011 which includes restrictions relating to conditions for sale as provided in regulation 2.3.14 which includes clause 10 which refers to all edible oils, except coconut oil, olive oil imported in crude, raw or unrefined form shall be subjected to the process of refining before sale for human consumption. It was, therefore, made clear that edible oil is different than crude oil of edible grade which may require further processing to make it edible oil



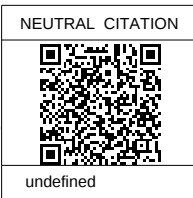
whereas Entry No. 33A/57 in notification applicable for exemption refers only to edible grade and not edible oil.

56. Reliance placed on behalf of the petitioners on decision of Calcutta High Court in case of **Supreme Oil Industries Limited & anr.** (supra) pertaining to rice bran oil in similar controversy as to applicability of rate of duty on edible grade or edible rice bran oil is also applicable to consider the issue in this petition relating to crude palm kernel oil edible grade as the Hon'ble Calcutta High Court after considering that there being no definition of edible oils within the four corners of the scheme and the fact that a particular type of oil cannot be used for immediate direct human consumption, it was held that it was



immaterial for the purpose of interpreting the scheme. The Hon'ble Supreme Court in case of **Commissioner of Commerical Taxes and others v. Supreme Oil Industries Ltd and others** (supra) has upheld the order passed by the Calcutta High Court in reference to the Scheme of the West Bengal Sales Tax Act, 1994 observing as under:

"2. In 1994, Government of West Bengal introduced an incentive scheme known as West Bengal Industrial Promotion (Assistance to Industrial Units) Scheme, 1994, (hereinafter referred to as the said 'Scheme'). The Scheme provided for financial assistance to Industrial Units manufacturing goods enumerated in 'Schedule A' to the Scheme. That Schedule contains "Edible Rice Bran Oil" as one of the Items which made the claim for assistance admissible under the Scheme. Respondent No. 1 is a registered dealer under West Bengal Sales Tax Act, 1994. Respondent No. 1 made an application in Form-1 claiming assistance under the said Scheme in respect of periods mentioned in Synopsis- B. Respondent No. 1 claimed that "Rice Bran Oil Raw Grade-I" manufactured by it formed part of "Edible Rice Bran Oil" and as such it was



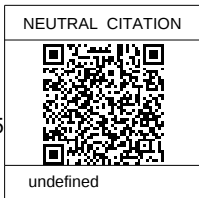
entitled to ninety per cent refund in respect of tax collected on sale in terms of the said Scheme. The dispute ultimately came before the High Court by way of Writ Petition as the Special Secretary, Finance Department, Government of West Bengal rejected Grade-applimanufactured respondent No. 1 herein holding that "Rice Bran Oil Grade-1, manufactured by respondent No. 1 herein was not "Edible Rice Bran Oil" as the manufactured product required further processing before it became fit for human consumption. The learned Single Judge set aside the order of the Special Secretary and directed the matter to be heard de novo in accordance with law. The view earlier taken by the Special Secretary came to be re-iterated vide Order dated 16th September, 2002 which made respondent No. 1 herein to move the High Court in Writ Petition No. 2170 of 2002, which came to be dismissed. The dismissal of the writ petition was reversed by the Division Bench of the High Court vide the impugned judgment, hence this Civil Appeal is filed by the Department.

3. Apart from the reasons given by the Division Bench, we find that the Scheme 1994 came to be enacted in view of the fact that 16 Units manufacturing Rice Brand Oil of Raw Grade-I in the State of West Bengal were facing acute financial problems and in order to alleviate those



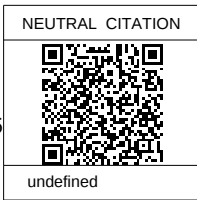
financial problems the State decided to give financial assistance for the very existence of the Units set up prior to 1994. In this connection we may point out that in this case we are concerned with three categories of Rice Bran Oil. The first category is Rice Bran Oil of Raw Grade-I which goes into the manufacture of vanaspati. The second category is Rice Bran Oil of Raw Grade-II not fit for human consumption. It goes in industrial uses. The third category is Rice Bran Oil Refined Grade which is fit for direct human consumption, as such. On enquiries we were informed that there is no Unit in the State of West Bengal which was in the manufacture of Rice Bran Oil of Refined Grade in 1994 when the Scheme stood enacted. Since, we are concerned with the incentive Scheme, we have to give weightage to the object behind enactment of 1994 Scheme. The object appears to be to give incentive to those Units set up prior of 1994 which were in the manufacture of Rice Brand Oil of Raw Grade-I alone. We have been taken through number of enactments, namely, Food Adulteration Act, Essential Commodities Act and the material indicating how the trade perceives Rice Brand Oil of Raw Grade-I and we find that the said product is perceived by the trade as Edible Oil."

57. In view of above analysis, it cannot



be said that only because crude palm kernel oil edible grade imported by the petitioners requires further processing for making it edible for human consumption, it would be excluded from Entry 33A/57 of the Exempt Notifications which refers to all oils, crude or edible grade attracting Nil/reduced rate of duty by classifying the product as palm kernel oil under Chapter 15132110 attracting 100% custom duty and respondents could not have assumed jurisdiction to read condition of further processing for end use of the crude palm kernel oil edible grade to make it edible oil for human consumption.

58. In view of foregoing reasons, the impugned show cause notice is liable to be quashed and set aside and is accordingly quashed and set aside. Rule is made



absolute to the aforesaid extent. No order  
as to costs.

59. Civil Application for fixing date of  
hearing would not survive and stands  
disposed of accordingly.

**(BHARGAV D. KARIA, J)**

**(PRANAV TRIVEDI,J)**

RAGHUNATH R NAIR